

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM ALBERT WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

January 26, 2010

No. 288436

Lapeer Circuit Court

LC No. 08-009538-FH

Before: Donofrio, P.J., and Meter and Murray, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for two counts of fourth-degree criminal sexual conduct, MCL 750.520e. This case arises from events that occurred over several months when defendant subjected a coworker, Kimberley Alexander, to a series of escalating unwanted harassing sexual advances and repeated inappropriate physical sexual contact. Because the trial court properly admitted evidence of defendant's similar misconduct, we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the trial court improperly admitted MRE 404(b) evidence regarding similar acts. Defendant objected to the challenged testimony at trial, so the issue is preserved on appeal. Because the issue is preserved, we review the trial court's decision for an abuse of discretion. *People v Watson*, 245 Mich App 572, 575; 629 NW2d 411 (2001).

MRE 404(b)(1) governs the admissibility of other crimes, wrongs, or acts as evidence and states as follows:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material, whether such other crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case.

To be admissible under MRE 404(b), the evidence must be offered for a proper purpose, must be logically relevant to a fact at issue and must not have its probative value outweighed by the danger of unfair prejudice. *People v VanderVliet*, 444 Mich 52, 55; 508 NW2d 114 (1993). In

the instant case, the trial court properly admitted the evidence under MRE 404(b) as proof of intent and scheme, plan or system in doing an act, both of which are proper purposes under the plain language of MRE 404(b).

Second, the other-acts evidence was logically relevant. In *People v Sabin (After Remand)*, 463 Mich 43, 63-64; 614 NW2d 888 (2000), the Supreme Court indicated that prior acts may properly be offered to show a defendant's scheme, plan, or system where the defendant devised and repeated a plan to perpetrate separate but very similar crimes. The defendant in *Sabin* was convicted of criminal sexual conduct in the first degree against his 13-year-old daughter. According to the complaint, the defendant told her after the assault that if she told her mother, her mother would be upset with her for breaking up the family again. Over the defendant's objection, his stepdaughter testified that he performed oral sex on her from the time she was in kindergarten until she was in seventh grade. She testified that the defendant told her not to tell anyone about his conduct because it would hurt the family and because her mother would be angry with them. *Id.* The Supreme Court in *Sabin* concluded that the evidence of prior misconduct had a requisite concurrence of common features to be admitted as evidence of common plan, scheme or system in doing an act, including: (1) the father daughter relationship; (2) the similar age of the victims; and (3) the defendant's attempt to silence the victims by playing on their fears of breaking up the family. *Id.* at 66-71.

Likewise, in the present case, the evidence of similar occurrences relating to Diane Morey, Alexander's co-worker, was sufficiently similar to the allegations made by Alexander to be relevant as evidence of a common scheme, plan, or system. Alexander and Morey are both female and of similar age. Both worked in the laundromat where defendant would visit. Both were subjected to repeated sexual remarks directed at them by defendant. Both experienced the defendant grabbing their buttocks as they walked by while working. Both experienced defendant grabbing their respective vaginal areas after being isolated in either the storage room or stockroom at the laundromat. There is "a concurrence of common features" such that "the various acts are naturally to be explained as caused by a general plan of which they are the individual manifestations." *Sabin, supra* at 64. The evidence of similar occurrences was relevant and probative as evidence of a common scheme, plan, or system. According to the standard set forth in *Sabin*, the MRE 404(b) evidence was properly admitted because it is sufficiently similar to the testimony of Alexander.

Furthermore, the trial court correctly admitted the evidence to prove intent with respect to the element of sexual gratification. Because criminal sexual conduct is a general intent crime, the defendant's specific intent is not at issue. *People v Piper*, 223 Mich App 642, 646; 567 NW2d 483 (1997). It suffices if "that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification." *People v Fisher*, 77 Mich App 6, 13; 257 NW2d 250 (1977). Defendant's statements to Morey bolster a purpose of sexual arousal or gratification. Statements such as [referring to sex] "we could do something and I wouldn't say anything if you didn't" and "when he was gonna get some of that?" indicate that the acts could reasonably be construed as being for the purpose of sexual arousal or gratification. Therefore, the evidence of intent was relevant and probative and the trial court did not err in admitting the evidence to prove intent.

Additionally, the probative value of the evidence was high where defendant claimed the events were fabricated. The danger of unfair prejudice did not outweigh probative value. MRE

403. Defendant has failed to show that an abuse of discretion occurred and reversal is not warranted.

As a final consideration under *VanderVliet*, 444 Mich at 55, the trial court may issue a cautionary instruction. Here, the trial court indeed provided the jury with a cautionary instruction. The instruction should have allowed consideration of Morey's testimony as evidence of a common plan, system or characteristic scheme, and intent. The evidence was not admitted for proof of motive, however, so the trial court should not have instructed that it could be used to show that defendant had a reason to commit the crime. Nevertheless, defendant did not object to the instruction and the issue is unpreserved. Unpreserved errors are reviewed for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). Our review of the record reveals that while the trial court improperly instructed the jury that it could consider Morey's testimony as evidence of a motive for criminal sexual conduct it did not affect the outcome of trial. *Id.* In addition, while examining the jury instructions as a whole, we conclude that the trial court's instructions fairly presented the issues to be tried and sufficiently protected defendant's rights. *People v Aldrich*, 246 Mich App 101, 124; 631 NW2d 67 (2001).

Affirmed.

/s/ Pat M. Donofrio
/s/ Patrick M. Meter
/s/ Christopher M. Murray